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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,398	01/28/2004	Joseph J. Settelmayer	YAK 382	2860

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EXAMINER

VANTERPOOL, LESTER L

ART UNIT	PAPER NUMBER
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3782

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/17/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/767,398

Applicant(s)

SETTELMAYER ET AL.

Examiner

Lester L. Vanterpool

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 6, 10, 12-14 and 17 is/are rejected.
- 7) ☒ Claim(s) 3, 5, 7-9 & 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 6, 17 & 18 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 3, 6 & 23 of U.S. Patent No. 6,918,521 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 6, 17 & 18 of application number 10/767,398 and claims 1 – 3, 6 & 23 of U.S. Patent No. 6,918,521 entitled the car top carrier with quick release clamping device both set forth claim limitations regarding the same box; having the bottom; the clamp device; the clamp device comprising the jaw device

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having first and second portions clamping to the pair of crossbars of a vehicle; and, the cam lever positioned inside the box.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 4, 6, 10, 12, 13, 14 & 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grönwoldt et al., (U.S. Patent Number 5823411) in view of Envall (U.S. Patent Number 5582313).

Grönwoldt et al., discloses the box (1) having the lid (3) and the bottom (2), one or more hinge devices (7 & 10) releaseably connecting the lid (3) to the bottom (2) (See Figure 2), each hinge (7 & 10) having the first portion (14 & 14A) secured to the lid (3) (See Column 3, lines 44 – 49), and the second portion (15 & 15A) secured to the bottom (2) (See Column 3, lines 44 – 49), the hinge (7 & 10) being configured to permit pivotal rotation of the lid (3) along the edge portion of the bottom (2) (See Figures 3 & 4), and being provided with the release mechanism (34) so that the hinge (7 & 10) device can also function as the latch (See Figures 3 – 6) allowing separation of the first (14 & 14A) and second portions (15 & 15A) of the hinge device (7 & 10), wherein the hinge device (7 & 10) automatically snaps into engagement when the

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first portion (14 & 14A) is urged toward the second portion (15 & 15A) (See Figures 3 – 9).

However, Grönwoldt et al., does not disclose the clamp device configured to attach the bottom of the box to a pair of crossbars on the top of a car.

Envall teaches the clamp device (29) configured to attach the bottom (3 & 4) of the box (1, 2, 3 & 4) to a pair of crossbars on top of a car (See Column 4, lines 62 – 66).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the clamp device configured to attach the bottom of the box to a pair of crossbars on the top of a car as taught by Envall with the car top carrier of Grönwoldt et al., in order to prevent the car top carrier from excess movement.

Regarding claim 2, Grönwoldt et al., discloses wherein the first portion (14 & 14A) has the enlarged structure configured for receipt by the catch (39) (See Figures 3, 4, 7 & 8), and the second portion (15 & 15A) has the catch (39) (See Figures 7 & 8).

Regarding claim 4, Grönwoldt et al., discloses the catch (39) includes the pawl (30) that is toward the constricted-passage position (20).

However, Grönwoldt et al., does not disclose the pawl that is spring biased.

It would have been obvious matter of design choice to make the pawl spring biased, since applicant has not disclosed that the spring biased pawl solves any stated problem or is for any particular purpose and it appears that the invention would perform

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equally well with pawl that moves in relationship with a release mechanism such as a key.

Regarding claim 6, Grönwoldt et al., discloses the box (1) having the lid (3) and the bottom (2),

one or more hinge devices (7 & 10) releaseably connecting the lid (3) to the bottom (2) (See Figure 2), each hinge (7 & 10) having the first portion (14 & 14A) secured to the lid (3) (See Column 3, lines 44 – 49), and the second portion (15 & 15A) secured to the bottom (2) (See Column 3, lines 44 – 49), the hinge (7 & 10) being configured to permit pivotal rotation of the lid (3) along the edge portion of the bottom (2) (See Figures 3 & 4), and being provided with the release mechanism (34) so that the hinge (7 & 10) device can also function as the latch (See Figures 3 – 6) allowing separation of the first (14 & 14A) and second portions (15 & 15A) of the hinge device (7 & 10), wherein one of the first and second portions (15 & 15A) has the catch (39) (Figures 3, 4, 7 & 8) including the pawl (30) toward the constricted-passage position (20), and the other portion (14 & 14A) has the enlarged structure (See Figure 3 – 9) configured for receipt by the catch (39) (Figures 3, 4, 7 & 8), and further wherein the pawl can be pushed aside by the enlarged structure upon entry but not upon exit of the catch.

However, Grönwoldt et al., does not disclose the clamp device configured to attach the bottom of the box to a pair of crossbars on the top of a car.

Envall teaches the clamp device (29) configured to attach the bottom (3 & 4) of the box (1, 2, 3 & 4) to a pair of crossbars on top of a car (See Column 4, lines 62 – 66).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the clamp device configured to attach the bottom of the box to a pair of crossbars on the top of a car as taught by Envall with the car top carrier of Grönwoldt et al., in order to prevent the car top carrier from excess movement.

However, Grönwoldt et al., does not disclose the pawl that is spring biased. It would have been obvious matter of design choice to make the pawl spring biased, since applicant has not disclosed that the spring biased pawl solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with pawl that moves in relationship with a release mechanism such as a key.

Regarding claim 10, Grönwoldt et al., discloses the first and second lid supports (16), each lid support (16) connecting the lid (3) to the bottom (2).

Regarding claim 12, Grönwoldt et al., discloses the first portion (14 & 14A) has the enlarge structure (See Figures 3, 4, 7 & 8) and the second section (15 & 15A) has the catch (39) (See Figures 7 & 8).

Regarding claim 13, Grönwoldt et al., discloses first portion (14 & 14A) having the enlarge position (See Figures 3 & 4) and the second portion (15 & 15A) having the catch (39) (See Figures 7 & 8).

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However, Grönwoldt et al., does not disclose the first portion having the catch and the second portion having the enlarged position.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the first portion has the catch and the second portion has the enlarged position, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Regarding claim 14, Grönwoldt et al., discloses the second portion (15 & 15A) having the receptacle (39) with the flared lip (See upper portion of 2 in Figures 7 & 8) allowing a limited amount of hinge rotation (See Figure 8).

Regarding claim 17, Grönwoldt et al., discloses the first (14 & 14A) and second portions (15 & 15A) are configured to permit relative rotation around at least two axes (See Figures 3 & 4).

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Grönwoldt et al., (U.S. Patent Number 5823411) in view of Envall (U.S. Patent Number 5582313) as applied to claim 10 above, and further in view of Sinelli (European Patent Number EP 1 231 112 A2).

Grönwoldt et al., as modified by Envall do not disclose each lid includes the slider mounted on the spring, and the cam slidably contacting the slider so that the lid support assists in opening and closing the lid.

Sinelli teaches each lid (2) includes the slider (See vertical slot on inner side wall in Figure 1), and the cam (40) slidably contacting the slider (See vertical slot on inner side wall in Figure 1) so the that lid support (30) assists in opening and closing the lid (2) (See Figure 1).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make each lid includes the slider, and the cam slidably contacting the slider so that the lid support assists in opening and closing the lid the taught by Hirtsiefer with the car top carrier of Grönwoldt et al., in order to enhance reliability.

Furthermore, it would have been obvious matter of design choice to make the slider mounted on the spring, since applicant has not disclosed that the slider mounted on the spring solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with slider fixedly mounted on vertical surface.

Allowable Subject Matter

6. Claims 3, 5, 7 – 9 & 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments, see pages 5 - 13, filed January 22, 2007, with respect to the rejection(s) of claim(s) 1 - 14, 17 & 18 under 35 U.S.C. 103(a) of Envall (U.S. Patent Number 5582313) in view of Wooten, Jr., (U.S. Patent Number 3008177) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Grönwoldt et al., (U.S. Patent Number 5823411) in view of Envall (U.S. Patent Number 5582313).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lester L. Vanterpool whose telephone number is 571-272-8028. The examiner can normally be reached on Monday - Friday (8:30 - 5:00) EST.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JW

LLV


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